BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

L. T. MARKHAM) Claimant)	
VS.	Dookst No. 109 040
MURRAY PAINTING)	Docket No. 198,949
Respondent) AND)	
TRAVELERS INSURANCE COMPANY Insurance Carrier	
AND (
WORKERS COMPENSATION FUND	

ORDER

The respondent and insurance carrier request review of the Preliminary Hearing Order of Administrative Law Judge John D. Clark entered in this proceeding on June 1, 1995.

ISSUES

The parties stipulate claimant sustained personal injury by accident on November 14, 1994 while performing work at a Wichita shopping center. The issue before the Appeals Board is whether respondent is responsible for payment of workers compensation benefits either as the immediate employer of the claimant or as a principal under the provisions of K.S.A. 44-503.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds as follows:

The Preliminary Hearing Order of the Administrative Law Judge should be affirmed.

- (1) The Appeals Board has jurisdiction to review the preliminary findings of the Administrative Law Judge under K.S.A. 44-534a.
- (2) Don Murray, a long time painting contractor, formed a partnership with Scott Stuber in the spring of 1994. Murray and Stuber discontinued the partnership in the summer of 1994, and Stuber bought the painting equipment and continued to paint. After discontinuation of the partnership, Stuber paid Murray fifteen percent (15%) of the proceeds from a contract when Murray contracted the job and Stuber performed it.

During the period the partnership existed, it bid a job at a Wichita shopping center. In November 1994, after the partnership was discontinued and after additional negotiations between the shopping center, architects and Murray, the contract was awarded to Murray and Stuber. A written contract for the work was then entered into by the shopping center and Murray Painting Contractors. Murray acquiesced when Stuber asked to perform the work. Stuber hired the claimant to work on the project.

The Appeals Board finds that the respondent is responsible for claimant's workers compensation benefits under this factual situation. Whether the Murray-Stuber relationship was a joint venture, a partnership, or that of principal and subcontractor, the respondent is responsible for payment of workers compensation benefits for the claimant either as an immediate employer, or as a principal under K.S.A. 44-503.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge John D. Clark entered in this proceeding on June 1, 1995, should be, and hereby is, affirmed.

in io oo ordered.
Dated this day of July 1995.
BOARD MEMBER
BOARD MEMBER
ROARD MEMBER

c: Dennis L. Phelps, Wichita, Kansas William L. Townsley, III, Wichita, Kansas Steven L. Foulston, Wichita, Kansas John D. Clark, Administrative Law Judge David A. Shufelt, Acting Director

IT IS SO ORDERED